

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.C. et al., Persons Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.C. et al.,

Defendants and Appellants.

D056297

(Super. Ct. No. J502166)

APPEALS from orders of the Superior Court of San Diego County, Carol

Isackson, Judge. Affirmed.

S.C. and Charles C. (together, the parents) appeal orders terminating their parental rights to their daughter, C.C., and son, Ch.C. (together, the children). They contend the court erred by finding the children adoptable and by not finding the beneficial parent/child relationship exception to termination of parental rights and adoption applied

to prevent terminating their parental rights. They also each join in the arguments of the other. We affirm the orders.

## FACTUAL AND PROCEDURAL BACKGROUND

On February 28, 2007, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of then six-year-old C.C. and then three-year-old Ch.C., alleging C.C. had been subjected to excessive discipline/physical abuse; the children had been exposed to domestic violence between the parents; S.C. had lost custody of four older children and had not addressed her anger issues; and Charles has a diagnosis of paranoid schizophrenia. The court ordered the children detained.

On April 5, 2007, the court found the allegations true, declared the children dependents of the court, removed physical custody from the parents, ordered the children placed in out-of-home care and ordered reunification services.

S.C.'s child welfare history includes 51 referrals dating to 1989. Domestic violence incidents between the parents had continued for more than eight years. Both parents received disability benefits; S.C. suffered from chronic back pain.

The children were placed in foster care. During the 18-month dependency period, the parents made only minimal progress in services and attended supervised visitation. At the 18-month permanency hearing on August 8, 2008, the court found reasonable services had been provided and returning the children to parental custody would cause a

substantial risk of detriment. It terminated court-ordered services and set a Welfare and Institutions Code<sup>1</sup> section 366.26 hearing.

In September 2008, the Agency reported that paternal relatives in Texas had been approved for placement of the children, and the children traveled to Texas for a preplacement visit. On September 29, the court ordered placement with the paternal relatives.

However, just a few weeks later, on October 31, 2008, the Agency petitioned under section 387, requesting the children be removed from the relatives' home and placed in foster care because the relatives were no longer willing to care for them. The relatives said they could not deal with the children's behavior problems. The court ordered the children detained, and they were again placed in foster care.

In her report to assess an appropriate permanent plan for the children dated December 1, 2008, the adoptions social worker reported the children were in good health. She also noted C.C. has average to above average intelligence and attended individual therapy. The psychologist who evaluated her diagnosed her with dysthymic disorder and defiant disorder and said she had experienced sexual abuse.<sup>2</sup> The psychologist opined that C.C. needed a consistent, structured, stable family environment. Ch.C. has borderline to low average development. He was diagnosed with adjustment disorder with mixed disturbances in conduct and emotion.

---

<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> It was reported that C.C. had been sexually molested by an older child while she was in foster care.

In assessing the children for adoption, the social worker said both children were attractive, intelligent, friendly and affectionate. Both had behavior problems, but their behavior improved in a structured environment. The children's Court Appointed Special Advocate noted they desperately need stability and a nurturing, consistent caregiver who will not give up on them. In December 2008, Ch.C. was diagnosed with attention deficit hyperactive disorder (ADHD). He began taking medication to treat this problem and showed good improvement.

The parents continued to have supervised visits with the children. C.C. hugged the parents when she saw them. At one visit she sat in S.C.'s lap and cried, saying she wanted to go home with S.C. Ch.C. appeared attached to his foster mother. At times the parents argued and yelled at each other in the children's presence. At other times they had calm, appropriate visits. At a visit in July 2009 and during another in October, Charles appeared intoxicated and was argumentative. In March 2009, C.C. had to be removed from another foster home and placed at Polinsky Children's Center. The foster mother had threatened to tell the social worker C.C. had stolen something in the home, and C.C. threatened to call police. Ch.C. remained behind in the foster home. C.C. told the social worker she wanted to go home so she could help the parents do what they needed to do. She said the parents' fighting would not hurt her or Ch.C., and S.C. just needed to stop drinking because drinking made her crazy.

Early in the dependency proceedings, a maternal aunt, S.B. (the aunt), came forward requesting placement of the children, but was denied placement because she had a criminal history. In August 2008, the Agency reevaluated whether placement with the

aunt was appropriate. The children began weekly unsupervised and overnight visits with her, and the social worker was working to obtain an exception to allow the placement. By July 3, 2009, the exception was obtained, and C.C. was placed with her. Ch.C. joined her on August 7. The aunt was committed to adopting the children. The children participated in therapy, and the aunt received in-home therapeutic services. C.C. said she liked living with the aunt but wanted to go home so she could help her parents do their classes. She said they wanted to change, but it was too hard for them. Ch.C. said he felt happy about living with the aunt forever.

The social worker recommended terminating parental rights and said the children were specifically and generally adoptable. The aunt wanted to adopt them and, if for some reason she could not adopt, there were several approved adoptive homes interested in adopting children with C.C.'s and Ch.C.'s characteristics. The social worker said it would not be detrimental to the children to terminate parental rights and the relationships they had with the parents were not parental in nature.

At the section 366.26 hearing, the social worker testified the children lived with the aunt, who had known them since birth. She said there was no reason to believe the aunt's home would not be approved for adoption. She testified the parents did not share parent-child relationships with the children, and C.C. felt responsible for the parents and wanted to take care of them. In balancing the benefits of maintaining the relationships and adoption, the social worker concluded the children would benefit more from a permanent plan of adoption. She explained the children had had many foster care

placements due to their behavior and the actions of the parents toward the children's caregivers.

Charles testified he visited the children regularly after they were placed with the aunt. He said the children called him "Dad." He did not want them to be adopted.

Sheryl B., S.C.'s half sister, testified she had lived with the parents for six weeks. She said Charles did not keep alcohol in the home, and she had never seen him under the influence of alcohol. She reported that at the visits she observed the children were reluctant to say goodbye.

S.C. testified she could not visit the children as often as she liked because of transportation problems, and she could not call because her telephone had been turned off. She said during visits she and Charles cooked for the children while the aunt merely watched. She suggested a plan of guardianship.

On November 20, 2009, the social worker reported C.C. had been taken to a psychiatric facility after attempting suicide by wrapping a scarf around her neck and trying to put the scarf over a ceiling fan. Staff at the facility said C.C. was doing well in treatment and they planned to discharge her to the aunt.

The social worker said when she and C.C. were filling out paperwork for admission to the psychiatric facility, C.C. started to check the box that indicated she was adopted, and she said she felt good about being adopted and that she could go back to her parents when she was 18. When asked the name of her mother, she wrote the aunt's name.

After considering the evidence and argument, the court found the children were likely to be adopted if parental rights were terminated and none of the statutory exceptions applied. It terminated parental rights and referred the children to the Agency for adoption.

## DISCUSSION

### I

Charles and S.C. contend the court erred by finding C.C. and Ch.C. were likely to be adopted. They argue substantial evidence does not support finding they are specifically and generally adoptable.

Before a court frees a child for adoption it must determine by clear and convincing evidence that the child is likely to be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223.) "In resolving this issue, the court focuses on *the child* -- whether his age, physical condition and emotional state make it difficult to find a person willing to adopt him." (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) Whether there is a prospective adoptive family is a factor for the court to consider, but is not determinative by itself. (*Ibid.*) "On appeal, we review the factual basis for the trial court's finding of adoptability and termination of parental rights for substantial evidence." (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) The appellant bears the burden to show that the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Substantial evidence supports the finding C.C. and Ch.C. are specifically and generally adoptable. Although both children present challenges, the aunt was committed

to adopting them. She had known them since birth and had demonstrated she could provide for them and care for their specific needs. Before the children were placed with her, she had undergone an extensive screening process and participated in services to aid her in bringing them into her home, and she had participated in therapy designed to help her deal with their problems. She was providing the stability and constancy the children so desperately needed. Ch.C. said he wanted to live with her forever. C.C. felt good about being adopted. C.C.'s recent suicide attempt had not changed the aunt's resolve to adopt her, and the psychiatric facility where C.C. was staying at the time of the hearing planned to release her to the aunt.

The social worker testified she knew of no reason why the aunt would not be able to adopt the children, and the record indicates no legal impediments to the adoption. In finding the children adoptable, the court said the aunt was committed to adopting the children. The court commented,

"She has remained committed to these children. In some ways, she is distinguishable from a specifically adoptable foster parent who has had the children in his or her home for several months and is committed to adoption. The distinguishing factor here is that [the aunt] has few secrets; there are few secrets of the children's lives that [the aunt] is not aware of. And even knowing this, she has indicated that she is committed to adopting the two children. And she has managed to care for them through -- despite the difficulties that their behavior sometimes presents."

Moreover, even if this placement were to fail, the social worker reported the children were also generally adoptable. There were two families in San Diego County with approved adoptive home studies and 14 families out of county or out of state interested in adopting a child with Ch.C.'s characteristics. There were two families in

San Diego County with approved adoptive home studies and 11 families out of county or out of state interested in adopting a child with C.C.'s characteristics. There was one family in San Diego County with an approved adoptive home study and eight families out of state or out of county interested in adopting siblings with the children's characteristics together. The social worker was very clear in describing the children's specific characteristics and challenges when ascertaining potential adoptive families. The court commented the social worker had provided more significant detail of their particular characteristics and behaviors than the court usually saw.<sup>3</sup> The court also considered C.C.'s suicide attempt when finding the children specifically and generally adoptable.

Additionally, the social worker in this case had extensive training and experience in adoptions. She had worked in this area for more than nine years, assessing adoptability, matching children with adoptive families and assessing parent-child relationships. She opined the children were specifically and generally adoptable and recommended terminating parental rights. The court was entitled to find the social worker credible and to give great weight to her assessments and testimony. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) Substantial evidence supports the finding the children are specifically and generally adoptable.

---

<sup>3</sup> The social worker described C.C. as a nine-year-old African American female, who has been sexually abused and is exhibiting sexualized behaviors, aggressive behaviors, attachment difficulties, having a mother who has used crack cocaine and alcohol, and having a parent with schizophrenia and depression. She described Ch.C. as a six-year-old African American male, with enuresis, speech and academic delays, ADHD, sexualized behaviors, aggressive behaviors, having a mother who has used crack cocaine and alcohol and having a parent with schizophrenia and depression.

## II

Charles and S.C. also assert the court erred by finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to prevent terminating their parental rights.

Adoption is the permanent plan favored by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds by clear and convincing evidence that a child is adoptable, it becomes the parent's burden to show that termination of parental rights would be detrimental to the child because a specified statutory exception exists. (*Id.* at p. 574.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the parent is required to show termination would be detrimental in that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, the court noted "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the] exception." In interpreting the meaning of "benefit" in section 366.26, subdivision (c)(1)(B)(i), this court stated in *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575:

"In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit of continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents."

Factors the court may consider in determining whether the parent-child relationship is important include: (1) the age of the child; (2) the portion of the child's life spent in the parents' custody; (3) the positive or negative effect of interaction between

the parent and child; and (4) the child's particular needs. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.) In reviewing whether there is sufficient evidence to support the trial court's finding, the appellate court reviews the evidence in the light most favorable to the trial court's order, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 576.)

Assuming the parents met the first prong of the exception by maintaining regular visitation and contact, they did not show they had parent-child relationships with the children or that the relationships were so beneficial that it would be detrimental to the children to terminate parental rights. Charles and S.C. did not fulfill parental roles. The social worker said Charles and S.C.'s relationships with the children were like that of friendly visitors or extended family members, and that C.C. was a very parentified child who worried about the parents and thought she should live with them so she could get them to participate in their services.

The parents did not show that the benefit of continuing the relationships would outweigh the benefits of adoption and offered no evidence to support this assertion. By the time of the hearing, C.C. and Ch.C. had been out of the parents' custody for two years nine months. The children had had multiple placements and had known only instability and change. They desperately needed a stable, permanent home. The parents had made minimal progress in services and could not offer this to them. Children should be given the opportunity to bond with an individual who will assume the role of parent. (*In re*

*Brittany C.* (1999) 76 Cal.App.4th 847, 854.) The parents did not show the exception to termination of parental rights and adoption of section 366.26, subdivision (c)(1)(B)(i).

The parents rely on *In re S.B.* (2008) 164 Cal.App.4th 289, a case from this court, to support their argument the court should have applied the beneficial parent-child relationship exception. In *In re S.B.*, we reversed the trial court's finding that the beneficial parent-child relationship exception did not apply after concluding the child would be greatly harmed by loss of the significant positive relationship she shared with her father. The father had complied with every aspect of his case plan, frequently visited his daughter and was devoted to her. She loved him and wanted to live with him. (*Id.* at pp. 294-295.) Here, the parents did not make such a showing. Further, while factual comparisons between cases provide insight, these comparisons are not dispositive. The determination on appeal is whether there is substantial evidence to support the trial court's findings that the beneficial parent-child relationship exception did not apply. We conclude that on the facts of this case, the court's findings are fully supported.

#### DISPOSITION

The orders are affirmed.

---

HALLER, J.

WE CONCUR:

---

HUFFMAN, Acting P. J.

---

McINTYRE, J.